FILED
FEB 28 195
JOHN T. FEY, Cl

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1956.

No. 706

RAY S. KALWAJTYS, WALTER J. KALWAJTYS, BERNICE KALWAJTYS, and WERONIKA KALWAJTYS, individually and as co-partners doing business as GENERAL PRODUCTS,
Petitioners,

vs.

FEDERAL TRADE COMMISSION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Reply Brief for Petitioners

MANDEL L. ANIXTER
79 W. Monroe Street
Chicago 3, Illinois

ARTHUR ABRAHAM
77 W. Washington Street
Chicago 2, Illinois
Attorneys for Petitioners.

CHICAGO LAW PRINTING CORPORATION, 189 W. MADISON, CHICAGO - FRANKLIN 2-8521

In The

Supreme Court of the United States

October Term, A. D. 1956.

No. 706

RAY S. KALWAJTYS, WALTER J. KALWAJTYS, BERNICE KALWAJTYS, and WERONIKA KALWAJTYS, individually and as co-partners doing business as GENERAL PRODUCTS,
Petitioners,

vs.

FEDERAL TRADE COMMISSION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Reply Brief for Petitioners

Where the representations complained of are not only true, but incapable of misinterpretation, it constitutes mere denial of review to deny the petition on the ground that the meaning of advertising or other representations to the public, or their tendency or capacity to mislead are facts to be determined by the Commission.

Assuming as an abstract proposition that the capacity of representations to mislead are facts to be determined by the Commission, it clearly has no application to the instant case where the conclusion that the representations are false or deceptive is utterly without tenability.

1. The representation that the proposition was made to "selected families with a baby or small child" defined in express and simple terms the only basis for selection. Neither the Commission, the Court of Appeals, nor counsel has suggested anything that the prospective customer might have believed other than the precise and simple truth.

2. The prospective customer understood that she paid $39.95 and received the album and certificates. She could not have been mislead since she necessarily understood precisely what the deal was.

3. Whatever "reduced" or "promotional price" might mean in the absence of clarification, in the instant case the salesman explained in detail to the prospective customer that what he meant by "promotional" or "reduced" price was that if the album or photographs were purchased elsewhere at retail, the usual aggregate price of the material would be $114.50 (Com. Exhibit 6, p. 4). This was true and the Commission expressly so found (R. 52). Whatever presumptions may be indulged in favor of the conclusion of the Commission, it cannot support a determination that is utterly and clearly wrong.

Assuming any relationship between the words used and the impression created in the minds of the prospective purchasers, the representations were true and incapable of deception. The interpretations indulged in by the Commission to support their conclusion of falsity are merely fanciful and find no support either in the language of the representations or ordinary common sense.

Under these circumstances a denial of the Petition to set aside the Order of the Commission, based merely upon a general presumption in favor of the Commission's finding and without any support whatever either in the evidence or in the ordinary meaning of common English words is a substantial denial of review.

Nor does the case of *Federal Trade Commission* v. *Standard Education Society, et al.*, 302 U.S. 112, tend to support the decision in the instant case. On the contrary the principles of review employed in that case are diametrically opposed to those employed in the instant case. In that case the representations were actually false and they were considered in detail to demonstrate their falsity. The Court in its Opinion attaches great weight to the testimony demonstrating that citizens of ten states—teachers, doctors, college professors, club women and businessmen were actually deceived.

In the instant case no one was deceived, and the words themselves, given any reasonable interpretation, were utterly incapable of deception.

Indeed the testimony of the only customer called by the Commission demonstrated that she was not deceived. (R. 98)

There is a very real difference between honesty and dishonesty. That difference may be obscured quite as readily by assuming that all representations are dishonest as by assuming that all representations are honest.

A grave danger lurks in a principle of review which, though expressed in conventional language, has the impact of conclusively presuming that a finding of the Commission must be right no matter how clearly untenable it may be.

It is respectfully submitted that the instant case merits review by this Court and that the Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit should be granted.

Respectfully submitted,

MANDEL L. ANIXTER
ARTHUR ABRAHAM
Attorneys for Petitioners.